IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

NOTICE OF MOTION NO. 70 OF 2007

IN

WRIT PETITION NO. 3156 OF 2006

Shivanjali Co-op Hsg.Soc.Ltd
and Ors. ...Petitioners
vs.
Mumbai Municipal Corporation & Ors. ...Respondents

Mr.S.U.Kamdar i/by.M.P.Jagani for the Petitioners.

Mrs.A.K.Savla for Respondent Nos.1 and 2.

Ms. D.M.Shah for Respondent No.4.

Mr.Vishal Phal, AGP for Respondent No.6.

Mr.K.K.Singhvi a/w. Mr.M.K. Nesari i/by.M/s.Subhash Pradhan & Co. for Respondent NO.5

CORAM: J.N.PATEL, J. And

S.C.DHARMADHIKARI, J.

DATE ; 21ST FEBRUARY, 2007.

P.C :-

1. Rule.

2. Heard Learned Counsel for the parties.

3. On 12.2.2007 this court felt that the petition can be disposed off at the stage of admission itself. It does not appear to, be feasible as there are allegations and counter allegations brought on record by the Petitioner and Respondent No.4 and 5 as regards various illegalities in the construction of the building and its use by the members of the Petitioner Society for which the Respondent no.1 has initiated necessary action. There is no dispute over the fact that the Gymnasium and Health Club which is run by Respondent No.5 in the premises let out by Respondent no.4 is unauthorised.

4. Mr.Singhvi, Learned Sr.Counsel appearing for Respondent No.5, submits that, though the Gymnasium may be unauthorised, it is for the Respondent No.1 to initiate necessary action, but, this Court cannot injunct the Respondent No.5 from operating the Gymnasium. It is further contended that the illegality/irregularity, if any, can be well regularised by the Respondent No.1 in law and that injunction granted by this court vide order dated

17.1.2007 is without jurisdiction and it forecloses the rights of the Respondent No.5 to seek redress in the matter.

5. We are prima-facie satisfied after examining the various provisions of the Development Control Rules and the MRTP Act, 1966, a Gymnasium is being operated from the Basement without any permission from the Respondent No.1 and therefore unless proper permission is obtained by the Respondent No.5, they cannot be permitted to continue with the illegal activities. May be that the building of the Society is constructed contrary the Sanction Plan, but, this cannot come to the rescue of Respondent No.5 in permitting him to continue the illegality.

6. Learned Counsel appearing for Respondent no.1, has pointed out that, in their Affidavit-in-reply it has been categorically stated that action has been initiated against the Petitioner as well as Respondent No.5 by issuing notice and that BMC would take necessary action. We therefore make it clear that till the Respondent No.5 has a valid permission

and authority under the law, he will not operate the Gymnasium from the Basement.

7. Liberty to the Learned Counsel for the parties, to approach this Court for modification of the order, if the parties are able to obtain necessary permission from the competent authority.

8. Notice of Motion stands disposed off in the aforesaid terms.

sd/-

(J.N.PATEL, J)

sd/-

(S.C.DHARMADHIKARI, J)